

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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|--------------------------|---|--------------|
| KYLE RAINEY | : | CIVIL ACTION |
| | : | |
| v. | : | No. 01-623 |
| | : | |
| BEN VARNER, <i>et al</i> | : | |

ORDER

AND NOW, this 21st day of February, 2008, upon consideration of the Petition for Writ of *Habeas Corpus* (Document No. 1), the Report and Recommendation of Magistrate Judge Peter B. Scuderi, the petitioner's objections to the Report and Recommendation, the Commonwealth's Objections to the Report and Recommendation, and after oral argument and a thorough and independent review of the record, it is **ORDERED** that:

1. The Report and Recommendation of Magistrate Judge Peter B. Scuderi is **APPROVED IN PART** and **ADOPTED IN PART**;
2. The Magistrate Judge's recommendation that a writ of *habeas corpus* be issued is **NOT ADOPTED**;
3. The Petition for Writ of *Habeas Corpus* is **DENIED** and **DISMISSED**; and,
4. The petitioner having failed to make a substantial showing of the denial of a constitutional right, there is no probable cause to issue a certificate of appealability.

/Timothy J. Savage
TIMOTHY J. SAVAGE, J.